

Issue: Compliance/30-Day Rule; Ruling Date: November 13, 2002; Ruling #2002-059; Agency: Department of Corrections; Outcome: Grievant out of compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2002-059  
November 13, 2002

The grievant has requested a compliance ruling in his February 22, 2002 grievance with the Department of Corrections. The agency's second-step respondent replied that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure.

FACTS

The grievant is employed as a Corrections Officer Senior. The grievant claims that on December 24 and/or 25, 2000, he was injured while on duty. He asserts that although he immediately informed his supervisor of his injury at the time it occurred, management failed to initiate the necessary paperwork as required by policy. As a result, he asserts that he failed to receive the Workers' Compensation benefits to which he was otherwise entitled due to his job-related injury.<sup>1</sup>

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>2</sup> When an employee initiates a grievance beyond the 30 calendar day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

This grievance asserts that agency management misapplied policy by not timely submitting an injury report. Accordingly, the grievant had to file his grievance within 30 calendar days from when he knew or should have known that agency management had failed to submit a timely report.

Under facility policy, when an employee is injured, he must report the injury as soon as possible to his immediate supervisor, but no later than the end of the workday. The employee

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<sup>1</sup> To the extent this grievance challenges the denial of Workers' Compensation benefits, we note that the grievant is contesting that denial through another state process, the Commonwealth's Workers' Compensation statutes, and thus the benefits denial itself cannot be addressed through the grievance procedure. *Grievance Procedure Manual* § 2.4 page 7.

<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

must also complete, sign and submit the Employee's Report of Injury form to the facility's Medical Department staff, who then are to provide the employee with the Approved Panel Physician List.<sup>3</sup> The supervisor in turn is to "immediately" investigate the incident and review the Employee's Report of Injury form, and to submit a written report of findings to the Institutional Safety Specialist. The evidence is in dispute as to whether the grievant appropriately and clearly reported the injury to his immediate supervisor. However, the evidence shows that the grievant was aware that policy required an injured employee to explain in writing how the injury occurred as part of the reporting process.<sup>4</sup> Thus, no later than 4 to 6 weeks following the December 2000 incident, based on his knowledge that he had not provided such written information, (nor had been asked to) the grievant knew or should have known that the proper reporting process had not been followed. Thus, while a specific trigger date for the 30-day grievance initiation deadline is somewhat difficult to establish, it is nevertheless clear that the February 22, 2002 initiation date, more than one year after the injury occurred, was not timely.<sup>5</sup>

The sole question remaining is whether there was just cause for the grievant's delay in initiating his grievance. The reason given by the grievant for his delay was that he was out on medical leave because of his injury until some time in March 2001 when he finally returned to work. Assuming without deciding that his injuries and the ensuing absence constituted just cause, the grievant has provided no reason for the additional 11-month delay in initiating his grievance once he returned to work in March 2001.

#### CONCLUSION

For the reasons discussed above, this Department has determined that the grievant is out of compliance with the grievance procedure by filing his grievance beyond the 30 calendar day period without just cause. By copy of this ruling, the agency is advised that his grievance should be marked as concluded due to noncompliance, and that no further action is required on this grievance. This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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June M. Foy

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<sup>3</sup> Internal Operating Procedure #222-7.0.

<sup>4</sup> *Id.* Grievant had used this process at least twice in the prior three years, and had signed an acknowledgement of his responsibility to familiarize himself with all facility policies and procedures.

<sup>5</sup> One can assume that the reporting should have been generated "immediately," within a day or so of the injury, a week or so being the outer limit. Thus, the grievance should have been initiated within 30 days of a week or two of the injury, and in no event more than a year after the injury.

<sup>6</sup> Va. Code § 2.2-1001(5).

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